IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.8534 OF 2003

Mr.Gajanan Dattatraya Samant & Ors. : Petitioners
(Orig. Defendants)

V/s.

Mr.Vitthal Mahadeo Chavan : Respondent
(Orig. Plaintiff)

...

Mr. Swapnil Pednekar for the petitioners.

Mrs.Shakuntala A. Mudbidri for the respondent.

...

CORAM : S.A. BOBDE, J.

April 8, 2005.

P.C.:

1. The petitioners, who were defendants in Regular Civil Suit No.69/01, have challenged the order dated 30.3.2002 permitting the plaintiff therein to withdraw the suit.

2. The learned counsel for the petitioners contended that the permission to withdraw the suit with liberty to file a fresh suit granted to the respondent is illegal. According to the learned counsel for the petitioners, it was necessary for the Court to issue a notice to the other

side before granting such permission. There is no merit in this contention. The learned counsel for the petitioners has relied on a decision of the Supreme Court in K.S. Bhoopathy v. Kokila (A.I.R. 2000 S.C. 2132). That case does not support the petitioners' contention. The Supreme Court has laid down that the Court must be satisfied about the existence of proper grounds or reasons for granting permission to withdraw a suit with liberty to file a fresh suit.

3. Moreover, Mrs.Mudbidri, learned counsel for the respondent, states, and this is not disputed by the learned counsel for the petitioners, that in pursuance of the liberty granted by the trial Court, the respondent has instituted a fresh suit bearing Regular Civil Suit no.41 of 2002 in which the petitioners have also filed a Written Statement and the suit is proceeding, in accordance with law. In the circumstances, I see no reason to interfere.

4. This Writ Petition is, accordingly, dismissed.

Sd/-

S.A. BOBDE, J.